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FISH & RICHARDSON P.C.
P.O. BOX 1022
MINNEAPOLIS, MN 55440-1022

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1 RECORD OF ORAL HEARING

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3 UNITED STATES PATENT AND TRADEMARK OFFICE

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6 BEFORE THE BOARD OF PATENT APPEALS

7 AND INTERFERENCES

8 _____

9

10 *Ex parte* HARRY W. MORRIS, DAVID LOWELL LIPPKE,

11 BOB WATKINS, ERIC BOSCO, and COLIN STEELE

12 _____

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14 Appeal 2009-011419

15 Application 09/690,007

16 Technology Center 2400

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19 Oral Hearing Held: April 20, 2010

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22 Before ROBERT E. NAPPI, ELENI MANTIS MERCADER, and

23 BRADLEY W. BAUMEISTER, *Administrative Patent Judges.*

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25 APPEARANCES:

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28 ON BEHALF OF THE APPELLANT:

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30

31 JEREMY MONALDO, ESQUIRE

32 Fish & Richardson, P.C.

33 P.O. Box 1022

34 Minneapolis, Minnesota 55440-1022

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1   The above-entitled matter came on for hearing on Tuesday, April 20,

2   2010, commencing at 10:32 a.m., at the U.S. Patent and Trademark Office,

3   600 Dulany Street, Alexandria, Virginia, before Victoria L. Wilson, Notary

4   Public.

5   THE USHER: Calendar number 56. Appeal number 2009-011419.

6   Mr. Monaldo.

7   JUDGE NAPPI: Good afternoon, Mr. Monaldo. Do you have a business card

8   you could give to the stenographer?

9   (Discussion off the record.)

10   JUDGE NAPPI: Sir, you have 20 minutes. You may begin whenever. There

11   is a little light over here that sometimes works right, sometimes doesn't, so if it

12   is flashing and we are asking questions, just keep going.

13   MR. MONALDO: May it please the Board, my name is Jeremy Monaldo and

14   I represent the Appellant.

15   This Application is directed to electronic advertising technology. I plan to

16   discuss two features of independent claim 1 that are not found in the applied

17   references and additional features of dependent claims 5, 6, 7 and 56 that are

18   not found in the applied references.

19   I would like to start with discussing the two features of independent claim 1

20   that are not found in the applied references. First, claim 1 recites varying an

21   amount of display time for which a later displayed advertisement is to be

22   displayed on a viewer's associated computer system based on the viewer's

23   monitored interactions with the viewer's associated computer system.

24   So this feature of claim 1 recites that you vary an amount of display time, how

25   long, how short an advertisement is displayed, for a later displayed

26   advertisement based on viewer's interactions with their computer system,

1   interactions being, for example, user input, whether user is using a mouse,

2   providing input using a keyboard, that type of thing.

3   The Examiner has rejected claim 1 using a combination of three references --

4   Blumenau, Guyot and Cezar. The Blumenau reference --

5   JUDGE BAUMEISTER: Actually, before we get to the art, I'm still trying to

6   wrap my head around the claim language.

7   MR. MONALDO: Sure.

8   JUDGE BAUMEISTER: If we could turn to claim 1, for example.

9   MR. MONALDO: Sure.

10 JUDGE BAUMEISTER: I see claim -- the third limitation was added

11 sometime during prosecution but I'm trying to figure out what's the difference

12 between, at step 2, of determining an amount of time to be used in later

13 displaying advertisements versus based on this determined amount of time

14 varying an amount of display time? So what's the amount of display time

15 versus the determining the amount of time?

16 MR. MONALDO: Right. So the system is going to determine an amount of

17 time to display advertisements to user based on the user's interaction, so it is a

18 determination I'm going to display advertisements to user one's computer for,

19 you know, five seconds or ten seconds.

20 JUDGE NAPPI: What you just said isn't in the claim, though.

21 MR. MONALDO: Well, determining an amount of time to be used in later

22 displaying advertisements on the viewer's computer system.

23 JUDGE NAPPI: Okay. That's not how much was --

24 MR. MONALDO: Right. It is an amount of time and it is just -- as an

25 example, it would be, you know, some period of time, five seconds, ten

26 seconds, that type of thing, so we are determining an amount of time to be

3

1   used in later displaying advertisements to a user. So I can see the user is

2   interacting with the computer very fast, they are moving to things very

3   quickly.

4   Maybe I would want to determine an amount of time that's very short to

5   display advertisements to the user because that user is quick, can interpret

6   things quickly and, therefore, process the advertisements very quickly.

7   Take, for instance, another user who may be very slow, an older user who is

8   not as familiar with using a computer. That user might have slow interactions

9   with their computer and my system will determine, based on their interactions,

10   an amount of display time to display advertisements to that user. That display

11   time would be longer, for example, than that user who interacts with their

12   computer quickly.

13   JUDGE NAPPI: And that's the second limitation.

14   MR. MONALDO: Well, we determine an amount of time and then we use

15   that amount of time to vary how frequently -- or how much time is used in

16   displaying an advertisement to a user. So we make some sort of determination

17   and then we take that and we vary that amount of time.

18   JUDGE BAUMEISTER: So 2 is the baseline that is varied by step 3 with the

19   tuning parameters.

20   MR. MONALDO: That's right, exactly.

21   JUDGE BAUMEISTER: Where in the spec is this initial determination for

22   step 2? I mean I saw all the stuff about the parameters but -- are the tuning

23   parameters varying it.

24   MR. MONALDO: Yeah, I'm -- I'm not -- the Examiner didn't raise a 112

25   rejection so I didn't plan to come here to talk about support in his specification.

1   I think we outlined it in our Brief where we believed it was found. If you give

2   me a second, I can --

3   JUDGE BAUMEISTER: I mean I guess the question, then, is -- because I

4   looked through it and I saw all the references being towards -- directed

5   towards the tuning parameters. So is it your position that if you are

6   establishing an advertisement schedule, by definition, you must inherently

7   have some predetermined amount of --

8   MR. MONALDO: I think that's right. That's exactly what I was going to say.

9   So if you are making some sort of change, you have some sort of

10   determination on the front as to what that change is going to be. And that's,

11   basically, how we see this claim as being read.

12   JUDGE BAUMEISTER: Okay. So, then, turning to Blumenau --

13   MR. MONALDO: Yeah.

14   JUDGE BAUMEISTER: -- I mean aren't they doing the same thing, that they

15   have an advertisement display schedule and then they are saying, well, you can

16   have this user input answers to a questionnaire for demographics and then you

17   can -- you can personalize or customize the advertisements based on their

18   responses? So wouldn't that be varying your baseline?

19   MR. MONALDO: Well, what Blumenau does -- and let me know if you

20   disagree with this -- is they take in a bunch of monitoring information, you

21   look at how content is being displayed to the user, how long it is being

22   displayed, whether it's being hidden from view, whether a mouse pointer is

23   within the area of the content, and they take that information and they have

24   one very, very limited amount of description that says that monitoring

25   information that Blumenau reflects can be used to effect a display of content,

26   and then it provides two examples, from my reading, and the two examples

1   provided were a display of schedule of when advertisements are started to be

2   displayed throughout a day or where some sort of consent is, so, example, if

3   they are using -- if they detect someone using their computer frequently in the

4   morning, we will schedule content advertisements to be displayed to that user

5   in the morning.

6   Another user might use their computer -- if they detect they are using it in the

7   afternoon, they'll schedule and start displaying advertisements to that user in

8   the afternoon. They are not varying an amount of time that's being displayed.

9   JUDGE BAUMEISTER: So the only question, then, is: It generically says

10   that you can vary parameters but it doesn't say specifically the duration of the

11   time is one of the parameters you can customize.

12   MR. MONALDO: That's right. It is just, basically -- I think the quote here is

13   that monitoring information can be used to effect the display of a set of

14   content. It doesn't really go into detail as to what that means. It provides those

15   two examples -- the schedule, the time when display of content starts, and it

16   also provides an example of what area of the screen you display content in.

17   So if it notices that you are, you know, hiding or covering specific areas of

18   your screen, it is not going to display an advertisement there, it is going to shift

19   it to a different area. So the practice describes those two examples but it

20   nowhere says that you vary an amount of display time.

21   JUDGE BAUMEISTER: Okay. And I -- I understand your position with

22   respect to Cezar is -- apparently that says you can vary any parameter and the

23   Examiner's position was since you can vary anything, duration is one of the

24   things that is inherently able to be varied and, therefore, it is obvious because it

25   is one thing that could be -- I'm sympathetic to your questioning of that

26   rationale, per se, but turning to Guyot, at column 2, lines -- there is a paragraph

1   that starts on about line 22 or 23, and then in the middle of the paragraph, at

2   line 25 -- I can wait until you get there.

3   MR. MONALDO: Yes. Sure. I'm here.

4   JUDGE BAUMEISTER: For example, "Client application can accumulate

5   statistics on which advertisements have been displayed and for each

6   advertisement and a number of times and/or how long it has been displayed." I

7   mean doesn't that tell you that the duration of time is a consideration?

8   MR. MONALDO: It is something that's monitored by the system. It is talking

9   about figuring out how long something is displayed. It is not about controlling

10   a later displayed advertisement based on what you monitor, it says it looks at

11   how long an advertisement has been displayed and that's some statistic it

12   collects.

13   Guyot is pretty specific, in that, when it varies a schedule, it is very similar to

14   Blumenau, which describes the schedule as a starting time of when an

15   advertisement is displayed, like that example I discussed earlier when you seek

16   user's computer activity during the morning, schedule starting advertisement in

17   the morning; user activity in the afternoon, schedule starting of advertisement

18   in the afternoon.

19   And in figure 5 and throughout Blumenau, it describes that after starting that

20   advertisement at step -- I guess S1300 in figure 5, it says, "Play ad for

21   predetermined time period." So these ads that are being displayed are being

22   displayed for that predetermined time period, which isn't adjusted based on the

23   subscriber's activity, it is merely the schedule of when that advertisement is

24   started or the initiation of display of that advertisement that's changed in

25   Guyot.

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1   JUDGE BAUMEISTER: Would it be fair to say that the whole question, then,

2   is -- let's assume that Blumenau and Guyot and all the prior art doesn't

3   specifically say "use this input information specifically for the purpose of

4   varying the time, the duration of the advertisements."

5   MR. MONALDO: Yes, that's right, the amount of time. And that's nowhere

6   in the prior art. None of these references show that. And, specifically, they

7   talk about maintaining that amount of time and specifically Cezar talks about

8   the whole purpose of Cezar is to have these timers to guarantee that

9   advertisements are displayed for a minimum amount of time that advertiser

10 selects and pays for.

11 So, in Cezar, they have timers associated with each specific advertisement and

12 then it makes sure that before that advertisement is changed or if the user stops

13 displaying that advertisement too early, that advertisement will be displayed

14 for that full amount of time associated with the timer before it's changed or an

15 impression is registered and compensation is accounted for in the advertising

16 system.

17 So, in all of the references, it is talking about just a set duration of time set by

18 the advertiser and no variation in that time.

19 JUDGE BAUMEISTER: Okay. Two questions. You remind me of another

20 question about claim interpretation.

21 MR. MONALDO: Sure.

22 JUDGE BAUMEISTER: So for later displaying advertisements, that term

23 includes the point at which I'm watching an ad and I'm on the computer and

24 I'm playing with my mouse and it's going across the screen, "a later displayed

25 advertisement" is not only the advertisement that comes up later, it also

26 includes that advertisement that is on the computer right then?

1   MR. MONALDO: Well, it is -- it is a later displayed advertisement, so I think

2   in this -- when we say varying in amount of time for which a later displayed

3   advertisement is to be displayed on the viewer's associated computer system.

4   So it is some advertisement that's after the interactions are monitored and is to

5   be displayed. It is not necessarily displayed at the time interactions are

6   monitored, it is later.

7   JUDGE BAUMEISTER: But then where -- I mean I understand the concept

8   that somebody is, like, either idle or they are active, and you are monitoring

9   that, and you say, okay, I'm going to delay or change -- I was going to flip to

10   the next ad at time X but because they are idle, I'm going to wait and how that

11   affects the ad that you are currently looking at.

12   I didn't see anything in the Spec. that said because I am idling now, once I

13   switch to the next advertisement, for that next advertisement, the time is going

14   to be changed.

15   MR. MONALDO: Yeah, I mean that's essentially what we think the claim

16   requires.

17   JUDGE BAUMEISTER: Where is that in the Spec?

18   MR. MONALDO: Yeah, like I said, we didn't have a 112 rejection. I didn't

19   thoroughly review the Specification support but I think we have outlined it in

20   the Brief of where we believe the support is found. And we talk about in our

21   claim adjusting -- or in the Spec., you know, in an original claim, the summary

22   has specific examples of where we adjust display time for a later displayed

23   advertisement based on this information. I think, also, later in the

24   Specification, we have, if I recall correctly --

25   JUDGE BAUMEISTER: Because I guess --

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1   MR. MONALDO: So, yeah, so I mean maybe figure 17 talks about, you

2   know, how you download certain tuning parameters to a computer system, you

3   know, and then they get a second set of tuning parameters and it describes that

4   that second set of tuning parameters is modified based on the interactions

5   related to the first set of tuning parameters, and as one of the attributes of that,

6   I think we talk about in the Specification is amount of display time as being

7   one of those parameters that could be modified in that second set of tuning

8   parameters.

9   JUDGE BAUMEISTER: Okay. So there is three possibilities.

10   MR. MONALDO: Yeah, I mean it is throughout. Sorry. I wish I had a better

11   answer for you. If we were facing a 112 rejection, I certainly would but, you

12   know, just off top of my head, these are the areas where I remembered that this

13   subject matter was coming from when we were looking at the claims here.

14   And I think claim 75 might have a little bit more detail and might match up to

15   the language a little bit more closely in how we have a general timing attribute

16   and changing that to some sort of user specific timing attribute later on.

17   JUDGE BAUMEISTER: Let me read through claim 75 real quickly.

18   JUDGE MANTIS-MERCADER: Can you tell us again, counselor, what were

19   you pointing out at figure 17?

20   MR. MONALDO: Yeah, if I remember figure 17 correctly, we talk about --

21   you know, it is -- you have a set of tuning parameters with the first set of ads

22   and then the viewer views those ads and, you know, some monitoring

23   information about the user's interactions gets uploaded.

24   And then there is a second set of tuning parameters that gets downloaded with

25   the second set of ads and I think we have some description in there that their --

26   those second set of tuning parameters have been adjusted based on how the

1   first set of ads were displayed, you know, whether the user got through them

2   quickly, you know, that type of thing, and as one of the parameters, we

3   described throughout the Specification as being amount of display time.

4   JUDGE MANTIS-MERCADER: Okay. Thank you.

5   JUDGE BAUMEISTER: Okay. I'm tracking.

6   MR. MONALDO: Thank you.

7   JUDGE BAUMEISTER: Okay. I was coming in here thinking that we were

8   talking about during a first given set of block of advertisements but --

9   MR. MONALDO: I mean I guess it could be during a first block but we talk

10   in the claim here that it is, you know, to be displayed on the viewer's computer

11   system, so it might be in a first set of advertisements that are downloaded you

12   see how the user is going through the first few and then modify it later if the

13   user is going fast.

14   JUDGE BAUMEISTER: I don't think if there is support for that.

15   MR. MONALDO: There might not be but I'm just -- you know, from claim

16   language, you know, that was --

17   JUDGE BAUMEISTER: So, if it were -- okay. Never mind. Okay.

18   MR. MONALDO: So --

19   JUDGE BAUMEISTER: While we are at it, and I have you here, and I can

20   grill you a little bit, so let's say, for example, if one were to interpret the claim

21   language, and I think you are saying that this isn't a proper interpretation, but if

22   it were that you have a baseline and the later displayed advertisement is the

23   one that is being displayed while you are playing with your mouse and it is --

24   you are either active or idling and that one before you switch constitutes the

25   later displayed one --

26   MR. MONALDO: Uh-huh.

1 JUDGE BAUMEISTER: -- and the art doesn't say that time is -- time duration

2 is a particular attribute that can be changed based on the personalization or the

3 demographics information.

4 I guess my question is if something says you can personalize an ad and you

5 can do it on -- based on age, for example, isn't it obvious that kids' attention

6 span is shorter then an adult's and you might want to have a shorter duration

7 advertisement for one segment -- audience segment than another.

8 MR. MONALDO: That might be very well possible but I mean our claim

9 requires monitoring interactions with the user's computer system, so I don't

10 think demographic would be covered in that. Monitored --

11 JUDGE BAUMEISTER: So sending in and answering the questionnaire and

12 typing in all that information doesn't constitute a monitored interaction?

13 MR. MONALDO: Not from my understanding. I mean maybe it does. I don't

14 know. I mean from my understanding of the claim language, you talk about

15 monitoring interactions with the viewer's associated computer system and it

16 has the examples we described throughout the specification as being how a

17 user is using their mouse, how they are inputting the computer system, so I

18 have always thought of monitoring interactions as being those types of

19 interactions.

20 Submitting data through the computer system, I don't know if the claim is

21 broad enough to cover that. It may be but, in that case, I don't think the

22 references themselves talk about adjusting the display time or duration of

23 advertisements based on those factors even assuming that that was a proper

24 construction and specifically doing so in a manner that differs the amount of

25 display time between the users.

1   So our claim also requires that the varied amount of time for which the later

2   displayed advertisement is displayed is different than an amount of time on

3   another's computer system, so we are looking at the interactions on both two

4   different computer systems and varying the display time so that advertisement

5   one is displayed for a first amount of time on the first user's system and that

6   same first advertisement is displayed on a different amount of time on another

7   user's computer system.

8   I don't think any of the references in there disclose that. I'm not sure.

9   JUDGE BAUMEISTER: Yeah, I guess aren't those kind of hand in glove,

10   though? If one were to assume for the sake of argument that duration is one of

11   the things that you can personalize, then, by definition, on two different

12   systems, they are going to be different durations of time.

13   MR. MONALDO: Well, I think that that's probably true, yes. If something is

14   personal -- personalized, you are going to, you know, get different display

15   time. I think that's accurate. I don't think that's the case in any of the

16   references that it says that display time can be personalized; rather, you know,

17   each of them -- in Guyot, we clearly say predetermined time interval. In

18   Cezar, it is all about letting the advertiser pick how long advertisements should

19   be displayed and it doesn't want to vary. It wants to make sure that you get

20   that amount of time every single time it is displayed to any user.

21   So, you know, if you are looking at Cezar and trying to combine those timers

22   into any of the other references, it would completely subvert its purpose if you

23   started modifying those timers on a user specific basis because that's not what

24   the intention of those timers are.

25   JUDGE BAUMEISTER: I don't have any further questions.

1   MR. MONALDO: Okay. Maybe quickly discuss the dependent claims, the

2   features?

3   JUDGE BAUMEISTER: I'm already sold on your arguments for that but if

4   you want to spend the time --

5   MR. MONALDO: All right. Well, then, I don't intend to waste the Board's

6   time. Thank you.

7   JUDGE NAPPI: Thank you very much.

8   MR. MONALDO: Thank you.

9   Whereupon, the proceedings at 10:52 a.m. were concluded.

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